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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

ARNAUD PARIS,)	
)	
Petitioner,)	Case No. 1:22-cv-01593-MC
)	
v.)	
)	December 7, 2022, 2:00 PM
HEIDI MARIE BROWN,)	
)	
Respondent.)	
)	

COURT TRIAL
EXCERPT OF TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHAEL J. MCSHANE
UNITED STATES DISTRICT COURT JUDGE

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* * *

1 THE COURT: All right, folks. Thanks for your
2 patience. Let's go back on the record, and we'll hear any
3 closing arguments the parties wish to make, starting with the
4 Petitioner.

5 MR. STARKS: Thank you, Your Honor. Are we -- did
6 that mean we're set?

7 THE COURT: Yes.

8 MR. STARKS: Okay. Thank you.

9 And I would want to start with just pointing out that
10 what's on the ELMO, Your Honor, is what I sort of understand --
11 understood -- was the theoretical thing that the Court's surely
12 working its way through. Article III is the article about
13 wrongful removal and retention.

14 The Ninth Circuit in the Mozes case, which is M-O-Z-E-S,
15 has told us here sort of the questions you're going to ask
16 yourself when you're thinking about a wrongful removal as a
17 judicial officer, I mean, as the lawyer, when I'm analyzing my
18 case. So that will be there just if you've got questions or
19 thoughts about any of those particular questions as I go.

20 And now I'll start. So, as a lawyer, you know, I like
21 logic puzzles. I think many of us do. That's why we go into
22 the law. It's interest of figuring out the spaghetti and how
23 to unwind the noodles. And so, as a result, I have a tendency
24 to see them sometimes where they are really not. And so I find
25 it important for me, in many of my cases, and certainly in this

1 case, as well, to take that big step back and ask myself
2 whether I've really got a puzzle or not.

3 And I think how I would do that, in this case, is take
4 that first big step back and ask, "Why do we have the Hague
5 Convention at all?" And, you know, I've answered that case --
6 I've answered that question how the Ninth Circuit answers it in
7 Mozes. And, you know, every circuit answers it about the same
8 way. But I have always liked the Third Circuit sort of
9 cut-to-the-chase talk about why we have the Convention.

10 And I'm thinking specifically the Karkkainen case. It's
11 K-A-R-K-K-A-I-N-E-N. It's 445 F.3d 280, Third Circuit, 2006.
12 In the Karkkainen case, the court said, "The Convention was
13 designed to deter parents from engaging in international forum
14 shopping in custody cases." That's what the Convention is for.

15 I think that's a nice, really, straight to the point, why
16 do we have the Convention, and why are we sitting here today?
17 Because we all know what happened in this case. This does not
18 become a logic puzzle case when we ask ourselves, through the
19 framework of why we have a Convention, why are we here?

20 The Respondent specifically, and with intentional
21 forethought, engaged in international forum shopping for the
22 custody case she planned no later than July 19th -- as we can
23 see from Exhibit 23, which was admitted into evidence -- the
24 case she planned to bring in Oregon when the time was right for
25 her to do so under the UCCJEA. That was the plan. And if the

1 Convention is to stop that, then she's violated the Convention.
2 There's a wrongful removal of the children as a result.

3 So the Court asked about wrongful removal, but I do -- and
4 I'll talk about that. But I do want to say that let's remember
5 there's actually two prongs to analyze, not just one. A
6 wrongful removal of children occurs when a parent takes
7 children to another country without authorization of the other
8 parent before leaving.

9 A wrongful retention is when a parent does not return with
10 those children to the country of habitual residence after some
11 agreed period of time. And we have both of those things to
12 think about in this case, Your Honor, not just wrongful
13 removal.

14 So, as I prefaced my remarks with, it's important, I
15 think, to understand that Exhibit 23 demonstrates a wrongful
16 removal. If Mr. Paris did not intend to follow the July
17 agreement, all that means is he had intended for the children's
18 habitual residence to remain in France. He intended a status
19 quo decision when it came to the July agreement, if you were to
20 believe that he never had any interest in following it.

21 That's not a custody forum shopping decision. That's a
22 status quo decision. The girls remain in their habitual
23 residence. They remain in their schools. They remain with
24 their friends and family with whom they've grown attached over
25 the three years that they've been in France.

1 And these are, of course -- you know, they're very young.
2 I mean, from their perspective, I imagine, other than this
3 short period of time they've been in Oregon, they really only
4 remember France. This was during, you know, ages four, five,
5 six, and seven. Right? I mean, this is a very formative time
6 for children. These are little French kids.

7 So we don't have a forum shopping issue going on if we are
8 just to believe that Mr. Paris was never interested in
9 following the agreement.

10 I would also say that I think it's a little tough on him
11 to say that I don't think that he ever planned to follow the
12 agreement. You know, we heard his testimony, and we all
13 understand that he's ill. And the way I think of those few
14 weeks that he remained behind in Paris in early August, is that
15 the force majeure of this situation for him became apparent to
16 him. He needed to be in France for medical care.

17 It was during that window between July 29, when his family
18 had left for Oregon, and August 19, when he joins his family in
19 Oregon -- it's during that period of time that he's talking
20 with his dad and having his dad raise alarm about this plan
21 that he's been cooking up to somehow have insurance in Oregon
22 and have it all work out.

23 It's during this time that he gets the Exhibit 25 that
24 confirms he has insurance that will last for no less than five
25 years to try to deal with the illness that he has.

1 It's during that time -- that August 19 -- or, I'm
2 sorry -- that July 29 to August 19 that he gets the notice of
3 Exhibit 26 that if he were to live outside France, that could
4 jeopardize his insurance.

5 And the idea at trial -- I mean, I'm an American
6 citizen -- the idea at trial is not to bash the U.S. medical
7 system, but to point out the obvious. Mr. Paris is at no risk
8 of going broke in France with the medical care that he needs.
9 He's not going to have -- he's going to have the full attention
10 of whatever medical team he needs and whatever medical services
11 he needs. There's not going to be an insurance company that
12 decides that for him, and it's not going to be the power of his
13 pocketbook that decides that for him.

14 He's not going to be bankrupt at the end of his illness in
15 France. And nobody here can promise that to Mr. Paris in
16 Oregon. We simply can't. We know how ObamaCare's been beat
17 around. Forget Regence Blue Shield and all the rest. You
18 know, the preexisting -- we all know the preexisting
19 conditions, which were -- tried to be attacked shortly after
20 the legislation was entered.

21 There are no guarantees in the United States about what
22 sort of medical care he's really going to have in Oregon. And
23 so I think it's pretty tough to -- I think it can be a little
24 tough -- to just sort of paint the same brush for both why he
25 might have -- between August -- between July 29 and

1 August 19 -- gotten some significant cold feet about this July
2 agreement, and what was going on, on the other side, which, on
3 July 19, had already planned, by January 2022-2023, to be
4 filing for custody in Oregon.

5 And these are two very -- the spirit between those two
6 differences of, "I don't want to follow the agreement," and "I
7 don't want to follow the agreement," are very, very different.
8 And only one of them violates the Convention. Only one of them
9 is international forum shopping by a family for purposes of a
10 custody decision. And that's not what Mr. Paris was doing.

11 And I'd also point out, you know, one of the things that I
12 didn't talk about in Exhibit 83. And Exhibit 83 is that
13 WhatsApp where Mr. Paris is talking about the fact that, "Hey,
14 I found this on your computer. Your explanation is making no
15 sense. Was this your lawyer or was this you? If it was really
16 just your lawyer and not how you felt, you would have fired her
17 right away to say these evil things about me. And the fact
18 that you're just waiting for me -- you're even going to use the
19 fact that I'm sick and in France against me, as being an absent
20 father, when you filed for custody in January."

21 Part of that -- he also says -- and I'll use the clean
22 language. He says, at one point, "It's my effing life." And
23 you know what he means by that. Right? What he means by that
24 is, "You're telling me you would lie to me just to have a
25 custody case in Oregon instead of France and maybe kill me?"

1 Right? "You would really do that?"

2 And so you can understand really the place he found
3 himself in as we're getting ourselves ramped up to these
4 children leaving and him figuring out really what's going on
5 with his health and what needs to happen next.

6 I still think that it's important also to understand that
7 the medical condition remains a big issue in this case. He
8 still has that medical condition. And a couple of things are
9 important. Both how I've described it, which I think anybody
10 who gets bad medical news is going to need some time to process
11 that. And, you know, he hadn't processed it on July 19 like he
12 processed it by August 20. Right? He simply had not. And I
13 don't think that that's wrong. I don't think we need to be
14 upset with him for taking some time to figure that out.

15 I would also point out that during the time that he
16 sorting this out as we run up to the July 19 agreement, you do
17 have to consider the psychological manipulation that he was
18 going through. You've seen the videos in Exhibits 47 and 48.
19 And they were devastating to him. Right?

20 THE COURT: I agree. But, I mean, up until the 13th,
21 the whole family was leaving for Ashland, and all of a sudden
22 he's gone with the passports, puts a hold on a tickets, and
23 everything that seemed to be in place disappears, and Ms. Brown
24 is in a hotel room with two kids.

25 MR. STARKS: I'm not sure that's exactly the case,

1 Your Honor. I understand what the Court is telling me. Here's
2 my -- here's what I believe I heard and what I think was going
3 on.

4 I think these parties were having problems back in April
5 and May and were in therapy. And I think that they were
6 discussing, in therapy, all kinds of things and hoping it was
7 going to get better. And I think one person thought, "I want
8 to move to Ashland, Oregon," and the other person thought, "I
9 want to try to keep my family together."

10 And so we have all this sort of marching along with one
11 person, perhaps somewhat naively, saying, "I want to keep my
12 family together," while another person would like to move to
13 Ashland.

14 Then you have the fact that in May and into June,
15 Mr. Paris learns that he's ill. And it becomes clearer and
16 clearer that he's ill enough that the idea of moving to Oregon
17 is becoming more and more an idea that's -- I know we don't
18 talk about this in the federal court for purposes of your
19 decisions -- but for how he's thinking about things, it's
20 becoming more and more not in the best interest of the
21 children. I mean, that's why he goes out and gets that
22 pediatrician's note that he does. Right? It's because he --
23 you know, he senses and he knows that the kids need to be
24 around him.

25 And I would also point out -- let's see if I can find it

1 in my notes here quickly. Otherwise, I'll come back to it.
2 You know, there's an email that the Respondent sends to
3 Mr. Paris, while he's in France in that July 29 to August 19
4 period, where she's talking about the difficulties that the
5 children are having, and thinking about how sick he might be,
6 and how he's not there.

7 So all these things are going on. And I certainly
8 understand the Court's -- what the Court was saying to me
9 when -- "Hey, I mean, yeah, those videos are pretty terrible.
10 But nobody looks exactly great on July 13, Mr. Starks," is what
11 I'm hearing you say. I don't disagree.

12 But you have to remember, I mean, who the pressure is on.
13 Right? I mean, the pressure isn't on Ms. Brown. Ms. Brown
14 doesn't have any physical maladies. Ms. Brown has a job in
15 France. We can find another apartment. If these parties were
16 in a better state in their relationship, we wouldn't be here.
17 Right? Because all it would have taken is them having a really
18 good conversation about how, "Look, I'm -- this is really tough
19 for me. This is not going to work. You just leaving, us not
20 having any sort of agreement in place, me trying to have
21 mediations with you" -- right?

22 You've got these two exhibits where Mr. Paris is saying,
23 "Hey, I mean, I'm not okay with this. We need to talk about --
24 I feel like you're leaving. We need to talk about the fact
25 that if you're leaving, and you're really not coming back, and

1 this isn't going to be a family anymore, I want a mediation to
2 try to figure out what our international parenting plan's going
3 to look like." Right?

4 So I don't think that -- I think it was well done
5 testimony. I don't think it was exactly what was going on. I
6 think Ms. Brown was very well aware that Mr. Paris had real,
7 real concerns about this move. And she was just hoping she
8 could -- it would get pulled off, and whatever the problems
9 would be would get sorted out in Oregon. That's how I feel
10 about it, Your Honor.

11 So there's the wrongful removal. Right? We've got
12 Exhibit 23. We know what that means. We also have Exhibit 49
13 and 50. These are the petition for the divorce and the
14 custody. These are the letter with the proposed temporary
15 order and the proposed parenting plan. And that's -- we have
16 the fruit of the Exhibit 23 plan. Right? It's no longer just,
17 "This is what I might do when I get to Oregon," as Ms. Brown
18 testified. It is, "Here's what I've done."

19 Now, she's hone -- she's filed sooner than she wanted to.
20 Right? She wanted to wait until January to know that she got
21 six months in Oregon. She went ahead and rolled the dice, did
22 it with three months, and argued not home state but significant
23 connections. Right? But you have the fruit of the decision
24 on -- that's set forth in Exhibit 23 of what she was going to
25 do. So we have the removal. We see it from Exhibit 23. We

1 see the fruit of that removal from Exhibits 49 and 50.

2 And let's just be clear -- right -- there would have never
3 been nine suitcases, there would have never been a lifted
4 travel ban, these children would have never been in Oregon on
5 July 29th for even a summer vacation if the Respondent had not
6 lied, pretended she wished to remain a couple to entice
7 Mr. Paris to follow the children and her to Oregon.

8 If she hadn't done -- if truly she had not done what she
9 did, which was enter into a July agreement she never intended
10 to follow, we would not be here, these children would be in
11 France, and these parties, if they couldn't make it work as a
12 couple, would have a French custody order about how to handle
13 their French children.

14 I also do want to talk about the agreement in a practical
15 way. And, again, I don't want to suggest the Court is here to
16 think about the best interest of the children. But I'm a
17 divorce lawyer, so I can't help but talk about this stuff a
18 little bit.

19 This was a family law agreement. Right? In a family law
20 agreement, if facts change such that an agreement between the
21 parties becomes detrimental to the children, no court enforces
22 that agreement. Right? As a practical matter, if the Court
23 were to determine that an agreement between parties had now
24 turned into something that would be detrimental for the
25 children, that agreement's gone. And I believe that that's the

1 case.

2 And I'm not suggesting Mr. Paris is a lawyer or a Court is
3 allowed to make those decisions, necessarily. But, as a
4 practical matter, what we have is a parent who's ill, who needs
5 to have medical care in Paris, and his kids should be there.
6 His kids should be around while he's going through this medical
7 care.

8 And this is where it was going to take me some time to
9 find it. The exhibit that I was talking about was Exhibit 27.
10 That's the email from the Respondent where she's describing to
11 him the issues that the children are having with his absence in
12 that July 29 to August 19 time frame. So, as a practical
13 matter, they shouldn't have a dead dad and they shouldn't have
14 an absent dad. Both of those things are not in their best
15 interest.

16 So, to me, as a practical matter, the agreement has always
17 been kind of a bigger thing than it ever needed to be over this
18 case. Because, again, if these parties had been working well,
19 that's not -- you would both walk away from that agreement.
20 "Oh, my God, you mean you're so ill that you've gotten this
21 five years of care in France now. Oh, my gosh, the kids are
22 communicating to me how scared they are about this." I mean,
23 there would be no conversation. Everybody would be back in
24 France. Right?

25 So, as a practical matter, it's just not in the best

1 interest of the children in that agreement. It's just not.
2 And so I don't think that it ever really needed to be followed.
3 I just don't. Especially when we know, ultimately, what
4 happened with Mr. Paris' need for medical care. So wrongful
5 retention, because I think that there is that in this case as
6 well.

7 So, again, not to make it sound like we don't all
8 understand. But wrongful removal -- you shouldn't have taken
9 them. Wrongful retention -- you should have brought them back,
10 and you didn't. Right? I mean -- and both of those are
11 wrongful under Article III, and both of those things are things
12 that you can circle and say, "As a result, wrongful; you've got
13 to send these kids back to France."

14 So I believe you have a couple of dates to choose from in
15 thinking about wrongful retention. You've got August 20. On
16 August 20, the Respondent convinces Mr. Paris to turn over the
17 children's French passports to her. Then she refuses, as she
18 testified on cross-examination, his multiple requests to return
19 those passports, leading him, as the Court knows, to file
20 police reports that are found in Exhibits 32 and 33 regarding
21 the state of affairs at the family home in Oregon.

22 If you -- and I know -- I'll get to (indiscernible) at the
23 end. You said it didn't matter too much.

24 THE COURT REPORTER: Sorry. "I'll get to" what?

25 MR. STARKS: I'll get to habitual residence at the

1 end. I'm trying to watch here. So I -- I'll get to habitual
2 residence at the end, because I know I should talk a little bit
3 about it. But, I'm with you, I don't know how France couldn't
4 be the habitual residence.

5 If France is the children's habitual residence, Mr. Paris
6 could not have wrongfully removed the children from Oregon with
7 their passports. The only thing that could happen is that,
8 without the passports, the Respondent could be sure that she
9 could accomplish a wrongful retention. That's the only thing
10 that could be accomplished by her maintaining the passports.

11 If France is their habitual residence, his removal of the
12 children back to France would not have been in violation of the
13 Hague Convention. She could have filed something in French
14 family court alleging that they had this July 19 agreement, and
15 he was breaching it, and the children should be brought back.
16 But it's not a Hague Convention case. France is the children's
17 habitual residence.

18 All it is, when you take those passports, is a wrongful
19 retention. That's all you're doing. You're making sure the
20 children, who are habitual residents in another country, cannot
21 be taken back to that country. It's not a logic puzzle.
22 Right? It is. I'm describing gravity. It is what it is. So
23 that's the first date.

24 I would also have you keep in mind that Mr. Paris never
25 got those passports back. Right? Those passports now sit --

1 because you entered an order saying that all passports needed
2 to be turned over to the Medford clerk. Those passports --
3 those French passports sit in the Clerk's Office in the federal
4 court building in Medford, Oregon. And so those passports have
5 been wrongfully retained as long as the children have been
6 wrongfully retained in this state.

7 The second date would be October 7. And I've described
8 Exhibits 49 and 50, which are the petition for divorce, and the
9 letter, and the temporary order, and the parenting plan, and
10 all that sort of stuff. I've described those as sort of the
11 fruit of the wrongful removal. Right? How do we know it was a
12 wrongful removal? Well, we've got Exhibit 23 and then we've
13 got the filing of a divorce.

14 But I would also point out that under Roche v. Hartz --
15 which is R-O-C-H-E -- Hartz, H-A-R-T-Z -- which is a district
16 court case out of Ohio. It's 783 F. Supp. 2d 995. It's a 2011
17 case. Under that case, the court was looking for dates to
18 figure out, okay, when did the wrongful retention start. And,
19 in that case, the court said the retention started the date
20 that the petition for divorce was filed. Because, at that
21 point, you had notice that the parent was never coming back
22 with those kids to the habitual residence that you were
23 asserting had been their habitual residence.

24 THE COURT: Help me out. I'm looking for the
25 exhibit. What day was the petition filed?

1 MR. STARKS: October 7, Your Honor. The exhibit is
2 Exhibit 49.

3 THE COURT: In your earlier argument that wrongful
4 retention is the date of withholding of the passports, that
5 date would be...

6 MR. STARKS: Oh, I'm sorry. That date would be
7 August 20. That would be the date that he turned over the
8 passport, and all requests after that date were denied by the
9 Respondent for their return.

10 THE COURT: Okay.

11 MR. STARKS: So those are the two dates. You've got
12 those two dates, I believe, to circle as potential wrongful
13 retention dates. But, again, I don't think wrong -- I
14 certainly understand all the evidence this Court has had to
15 take and all the things this Court has to think about. But,
16 for me, it's just really not a big logic puzzle for removal.

17 These children would not be here if there had been no July
18 agreement. That July agreement was fraudulently entered into
19 by the Respondent with no intent of ever following it. That
20 was a wrongful removal.

21 Now, what we would pivot to -- right -- if I've
22 established that we've got a wrongful removal, you'd pivot to
23 the defenses that the Respondent has raised. And she's raised
24 two Article 12 defenses. I guess, here I would point out -- I
25 think the Court knows, but just to point out -- my burden as

1 the Petitioner was on the wrongful retention part -- right --
2 to establish habitual residence.

3 If I've done that -- if you decide I've made a prima facie
4 case with the testimony I was able to put on and the great
5 argument I'm giving you now -- if you were to decide that, the
6 burden then shifts to them on any defenses they wish to raise.
7 And because -- and they raise two Article 12 defenses, consent
8 and acquiescence. In other words, that Mr. Paris has either
9 consented to the children being here or acquiesced to their
10 presence to be here. Right?

11 And that now is their burden. It's not my burden to say,
12 "No, we didn't." It's their burden, again, by preponderance of
13 the evidence, to convince you that more probably than not he
14 has consented or acquiesced.

15 I would also point out a couple of things when you're
16 thinking about these defenses. The concept of these defenses
17 is that they are narrowly drawn to effectuate the purposes of
18 the Hague Convention. And, you know, just about every case
19 that talks about this talks about it. But I will tell -- you
20 know, I'm looking, again, at a Third Circuit case. It's
21 Tsia-Yi Yang, T-S-I-A-Y-A; Yang, Y-A-N-G. That's Third
22 Circuit. It's 499 F.3d 259, a 2007 case.

23 You know, the idea is that these are narrowly drawn,
24 because the purposes of the Hague Convention are what? To send
25 children home; right? So we're not supposed to get overly

1 legalistic and technical. We're not supposed to be looking for
2 reasons to find these defenses. They're to be narrowly drawn
3 and you're to be convinced. Right? And so -- and I would also
4 point out that even where a defense applies, you, nonetheless,
5 have the discretion to return the children anyway.

6 And that's both that case and many other cases -- and
7 Hague Convention Article 18. Hague Convention Article 18 says,
8 "The provisions of this chapter do not limit the power of a
9 judicial or administrative authority to order the return of the
10 children at any time." So you have this sort of catch-all in
11 the Convention. Maybe some things were interesting. Maybe
12 they raised a defense that you thought was a good defense.

13 If you still think the children's home is France, and they
14 should go to France, then you still have the authority to do
15 so. These are to be narrowly drawn. And even if you find that
16 the defense is well taken, you have the discretion to order
17 their return anyway.

18 So here's the things I would have you -- the Court -- I
19 would ask the Court to try to keep in mind when thinking about
20 consent and acquiescence. First, I think consent is out the
21 door. Just like Exhibit 23 shows that there was a wrongful
22 removal, Exhibit 23 shows there was no consent to the removal.
23 Right? The consent that was obtained was fraudulently obtained
24 with a lie and would not have been obtained -- the consent to
25 remove the children to Oregon would not have been obtained in

1 the absence of that lie.

2 So then the question becomes acquiescence. And I have a
3 specific case in my materials that I provided to you in my
4 trial brief. It was a district court case out of Texas. It's
5 page 7 of the trial brief if the Court ever wants to take a
6 look at that particular case. And, in it, that father did some
7 of the things that this father has done who's before you.

8 Mr. Paris never consented to the children's enrollment in
9 school in Oregon, just like the father in the trial brief case
10 never consented to the children's enrollment in Texas. And
11 that was one of the ways the Court found there had been no
12 consent or acquiescence. He hadn't agreed to it. He hadn't
13 agreed for the children to be there to attend school there.

14 You have not only that he affirmatively wasn't involved in
15 the enrollment process of the children, but you also have
16 Exhibit 51, which is his email with the principal -- or with
17 the school personnel of some kind -- letting them know that he
18 did not consent to the children attending school in Oregon.
19 That's Exhibit 51.

20 And Exhibit 52 -- you have his email where he's attempting
21 to confirm whether the Respondent has ever let the principal
22 know that the children were just going to be there for a year.
23 And the principal says, "That's never been communicated to me.
24 No."

25 So you have a clear chain from him of, "I'm not agreeing

1 to this." Right? "Here's my email to the school. Here's my
2 email to the principal. I wasn't involved in enrolling the
3 children in school." And of course he did not sign the house
4 lease. So he did not consent to there being a house for the
5 children to be living in, in Oregon. And I think that's a big
6 deal and wasn't -- and maybe hasn't been talked a lot -- talked
7 enough about. He did not agree to sign a lease for these
8 children to be in Oregon for a year.

9 And so he didn't agree that they could attend school, and
10 he didn't agree they could live there in any document that was
11 put in front of him that would make him agree.

12 Now, there are things that happened. Right? If I was
13 opposing counsel, I'd argue about the fact that he was in
14 California, loaded up a truck, and brought it across state
15 lines with all the stuff. I'd also try to argue the nine
16 suitcases, but I'd remind you that the nine suitcases don't
17 exist without Exhibit 23.

18 But I'd try to argue all the stuff he did when he got to
19 Oregon. Right? I'd argue about, you know, what about the nice
20 WhatsApp messages where he says, "Let's be a family," and all
21 the rest of this? And, you know, I know what Mr. Paris
22 testified to -- that he felt he was -- that was the only way to
23 see his children. You know, there's -- other than his
24 testimony -- there's certainly no WhatsApps that say, "You
25 can't see the kids."

1 I will say, there are messages, though. Right? You've
2 got messages where, you know, he's being treated like a child.
3 Right? He's being told, "Oh, well, you know, maybe you can
4 start staying with the parents again when you apologize for
5 your behavior. This can be a good teaching moment for the
6 children to see you treated as a child having to apologize
7 before you can stay someplace."

8 This was not -- here's what I would tell Your Honor. I
9 think this is very clear, regardless of whose testimony -- or
10 whether either one of them had testimony you wholly believed at
11 any time -- there was a true power imbalance here. Right?
12 There's one person who's, you know, born and raised in France.
13 And their motivation, whether they're accomplishing it with the
14 greatest deal of aplomb every time, is to try to keep their
15 family together.

16 So it's not crazy to imagine a world where, when you have
17 this differential in power, and you have someone who's really
18 trying to keep a family together, and who is ill, and who wants
19 to be able to see their children, and is really doing their
20 best to try to figure out a way to stay on the person who's got
21 the power in the relationship right now -- stay on their good
22 side -- and talk them into coming back to France as a family.
23 Right?

24 It's easy to imagine taking steps that a clever attorney
25 might call, "Hey, you were just acquiescing to this removal or

1 this retention." But the facts would suggest -- are really the
2 product of what it's like to be in a messy relationship. You
3 know, many of us -- thankfully, most of us haven't in been in a
4 situation that was so messy they needed to be in front of a
5 federal court judge.

6 But we've all been in messy relationships where, at every
7 moment, we weren't necessarily at our best, and where, every
8 moment, we might have taken steps that we thought were the best
9 way to keep the peace. And if someone was to ask us later, in
10 a deposition or a trial, whether that meant we agreed or
11 acquiesced, we'd have to say, "Wait, wait, wait. That's not
12 what I meant or what I was trying to do."

13 So that would be what I would really try to drive home
14 with the idea of acquiescence, Your Honor. This is a true
15 power differential. He doesn't have the children's passports.
16 They are being kept from him. He sees the children when she
17 lets him see the children. Right? I mean, he's not on the
18 lease of the house. He's not going to come and go.

19 He testified that the keys to the car -- he didn't -- he
20 wasn't given the keys to the car. So he came and went as
21 people pleased, not necessarily how he pleased, in trying to
22 keep the peace in that situation, in trying all along to figure
23 out a way to say, "Hey, can we just get back to France?" You
24 know, that makes, to me, at least 51 percent sense as a way of
25 thinking about whether there's truly acquiescence in this case

1 or not.

2 So, in result, you said you didn't want or need a lot of
3 habitual residence argument. I agree. I mean, I don't know
4 how these children couldn't have been habitual residents of
5 France at the time of their removal. These are children who --
6 we have one child who, the testimony is unrebutted, was signed
7 up for a four-year program. So not only does that show that
8 she was habituated before -- that she had been there for three
9 years -- but that another three years was anticipated that the
10 family would be there just for the musical program that she was
11 engaged in.

12 And this family was looking for apartments. And that was
13 Exhibit 75, Your Honor, that you were thinking about earlier
14 today in your questions for Ms. Brown. Exhibit 75 is the text
15 messages and WhatsApp messages of the French apartments that
16 the parties had looked at. I think some of them -- some of
17 those are as early as February, and some of them are as late as
18 in between that July 19 and August 20 window. Right? So -- or
19 July 29th -- so July 29-August 19 window, when the children
20 have left on July 29 with Ms. Brown, but Mr. Paris remains in
21 France. That exhibit also shows him sending her apartments for
22 France during that window. Right?

23 So I think it's, to me, very clear that these parties and
24 the children were habitual residents of France. And so, you
25 know, what's that mean? And, as I said, Your Honor, I think

1 Holder says it best when it says, you know, "Are you sending
2 the children home if you send them back to France?" Because
3 your job is to send them home.

4 And the logic puzzles can be interesting. You know, as a
5 lawyer, as I said, you know, I have a weakness for them. You
6 know, if the restaurant serves mushroom soup on Wednesday and
7 lentil soup on Thursday and all that good sort of stuff. But,
8 at the end of the day, you know, most Hague Convention cases
9 can get boiled down to some pretty specific issues that carry
10 the day. And I feel very strongly that the specific issues
11 that I've identified for you in this argument really carry the
12 day.

13 These children need to be sent back home to their friends,
14 to the home that they've lived in, to the schools that they've
15 attended. These are French children, and they should be
16 returned. Thank you.

17 THE COURT: All right. Thank you.

18 For Respondent?

19 MS. SKINNER: Thank you, Your Honor.

20 The Convention and the enforcing U.S. law -- the ICARA --
21 indicate that the international abduction or wrongful retention
22 of children is harmful to their well-being. And I agree with
23 Mr. Starks' contention that this is not, although, a
24 best-interest case. And the Court must determine whether or
25 not a wrongful removal or retention takes place.

1 So the first step is determining whether or not a wrongful
2 removal occurred. The Court heard credible testimony from
3 Ms. Brown about the months and days leading up to the
4 children's removal from France. The Court heard testimony that
5 the parties had discussed over the years, since their move to
6 France in 2019 until their ultimate departure in 2022, that
7 that was an ongoing discussion about the parties.

8 I think there's some pretty clear evidence that the
9 parties left California in 2019 with an intention to be in
10 France for a limited duration while they were developing their
11 California property. And that that got delayed mostly because
12 of COVID and because of the pandemic that was going on. When
13 the discussion finally came back on the table again, after the
14 40th birthday that Ms. Brown celebrated, tickets were
15 purchased. Those were one-way tickets from France to the U.S.,
16 and it was specifically scheduled for a date that would work
17 for the children's schooling and their activities for
18 July 13th.

19 So the parties, at that time, agreed to have the return
20 move to Oregon. At that point, Mr. Paris took the lead on --
21 what was important to him in the move was to have an au pair on
22 the ground in Oregon to ensure that the girls were maintaining
23 their connection with France while in Oregon. And so on May
24 19th of 2022, the parties signed the au pair application. They
25 then interviewed the au pair, both by video and in person. She

1 was going to start in August of 2022, and the contract notes a
2 12-month commitment.

3 The parties continue on their steps towards their move to
4 Oregon by sending a letter and email to their French landlord
5 indicating that they were going to move to the U.S. and settle
6 in. The parties unenrolled the girls from both of their
7 schools for the upcoming school year, while reserving their
8 daughter's space in the musical program. That was to be put on
9 pause for a year.

10 And not only did Ms. Brown involve herself with the
11 removal of the children from the French school system, but
12 Mr. Paris was an equal participant in that. And we can see
13 that in Exhibits 211 and 213, where Mr. Paris is asking for not
14 only a copy of the radiation certificate -- the unenrollment
15 forms -- but he's also asking for a certificate showing that
16 his daughter had, in fact, passed that grade and could move on
17 to the next grade.

18 The parties sold their furniture from their big apartment
19 and took multiple steps. They gathered numerous suitcases from
20 different sources, from the grandparents, from others. They
21 bought luggage. They worked out the schedule again for when
22 they would move. And Ms. Brown took multiple steps in order to
23 ensure that she'd have a job when she got to the U.S.

24 She interviewed with multiple companies, and while she was
25 interviewing, Mr. Paris would watch the kids. And, ultimately,

1 she decided that the best employment move for her was to see if
2 her France employer could transfer her to their U.S.-based
3 position, which is exactly what happened. So that all fell
4 into line.

5 They said "goodbye" to their family and friends. They
6 purged items from their larger apartment, because it would not
7 fit in the small 200-to-300 square foot apartment that they
8 stayed at for a brief period of time. And they forwarded their
9 mail to Mr. Paris' father so that the refund from their large
10 Paris apartment could be mailed to him and not be lost. And so
11 when they did go back to France to visit, their mail would be
12 kept for them.

13 Mr. Paris was an equal and willing participant in all of
14 those steps until the unfortunate date of July 13th, when he
15 blocked the parties' removal from France. Thereafter, an
16 agreement was put in place that allowed the parties to reengage
17 with that agreement. And July 29th was chosen as the date that
18 everybody would -- well, at least Ms. Brown and the girls --
19 would go to Oregon, and Mr. Paris would follow thereafter.

20 And so --

21 THE COURT: But you would agree, I mean, he's allowed
22 to change his mind about the permanent removal from the United
23 States --

24 MS. SKINNER: I will get there, Your Honor.

25 THE COURT: -- or to the United States.

1 MS. SKINNER: And I have a couple of cases that I
2 would like to point out to you at that time. I appreciate that
3 question, Your Honor. Thank you.

4 THE COURT: Okay.

5 MS. SKINNER: And so the next question is whether
6 there was a wrongful retention. And that deals, again, with
7 whether or not the children remaining in Oregon thereafter was
8 at any point wrongful.

9 And I'd like to point out, for that specific question, an
10 answer. And that's in the form of a couple of appellate court
11 cases that I've printed off, and I'd like for the Court to take
12 very careful consideration of. Because they do answer for us
13 this question of what happens when someone retracts or rescinds
14 their agreement? Where does that leave us? And so if I may
15 approach with a copy of a couple of cases. And I'll hand the
16 same two to Mr. Starks.

17 THE COURT: So do these cases deal with retracting
18 while in the habitual residence, or once you get to the new
19 country?

20 MS. SKINNER: Both, Your Honor. And so I'll start
21 off with describing the situation in Gonzalez and Caballero
22 (sic). In that case, the petitioner, a U.S.-based parent,
23 allowed the respondent, who was a Panama-based parent who had
24 the -- who was the primary parent -- who had the child at the
25 time, to take the child to the U.S., but promptly after the

1 child left, claimed that the visit was to be for no more than
2 two weeks, and then contacted law enforcement.

3 The Ninth Circuit held that her revocation of prior
4 consent was too late. The court found that the petitioner's
5 claim that she only authorized a temporary removal was
6 inconsistent with the facts, and determined that the
7 respondent's testimony was more credible and consistent.

8 Now, she contends that the -- the petitioner contends that
9 the post-departure conduct shows that she rescinded or revoked
10 her consent to the removal and retention; however, the district
11 court found that post-departure -- excuse me -- that once the
12 district court found that there was the prior consent given --
13 they called it "ex ante consent" -- the court's inquiry was
14 complete. Because if someone shows ex post nonacquiescence --
15 so dispute after the fact -- that could not revive your return
16 remedy under the Convention.

17 The second case that I wanted to point out for the Court
18 also follows along, very similarly, with the facts of this
19 case -- *Cascio v. Pace*. And, in that case, the petitioner
20 argues that his agreement for the children to go to the other
21 jurisdiction was given under duress, and that his subsequent
22 conduct shows that he never actually consented to the
23 retention.

24 In that case, the court had some troubles with the
25 credibility of that witness. And the court ultimately found

1 that the consent exception applies when a petitioning parent
2 either expressly or through his conduct agrees to removal or
3 retention before it takes place. Again, in that case, the
4 petitioner argued that, well, he was under duress when he did
5 so. And the court ultimately found that the petitioner's
6 post-retention behavior was consistent with an individual who
7 had changed his mind after consenting and then rushed to
8 correct what he thereafter had decided to be an error.

9 The court finds, in short then, that the petitioner
10 expressly consented to the retention before it occurred, and
11 that his later change of heart is irrelevant, as the Hague
12 Convention does not provide a mechanism for the revocation of
13 consent once given.

14 And the reasoning behind that is pretty clear. It's
15 because we don't want to have the kids going back and forth,
16 just like in this case, where the children's residence in
17 France was abandoned. They do not have a home to go to in
18 France.

19 If they were to be returned today, they'd go to a
20 200-square-foot apartment where they'd be sleeping on a
21 pull-out couch. And that's not the result that this Court
22 should reach. And so I'd ask the Court to take careful
23 consideration of both Cascio and Caballero.

24 And, importantly, in the Cascio case, where the court has
25 some concerns about the credibility of the petitioning parent

1 and his claim that he was under duress, I'd like the Court to
2 look at the petitioner in this case.

3 Now, there is numerous documents into evidence that, when
4 compared with petitioner's statements, cast doubt on his
5 credibility. For example, Exhibit 248, the email he wrote to
6 the Topanga neighbors in 2019 about going to France for the
7 school year. He says, for a very kind of confusing explanation
8 up on the stand, about, "No, I didn't really mean that."

9 THE COURT: Right.

10 MS. SKINNER: "That was something that Ms. Brown" --
11 so -- so he said that was a lie that he said.

12 And then, when we look at Exhibit 206, the au pair
13 application, petitioner claims, very confusingly, either he
14 didn't know or he didn't read or he didn't believe that, in
15 fact, the au pair was a year-long commitment.

16 And then we look to 207 and 214, the email to the French
17 landlord indicating that they're moving back to the U.S.
18 Again, that's a lie, although I can't -- I couldn't quite
19 pinpoint as to why that would be a lie and why that would be
20 something that Respondent would be pressuring him to say.

21 Number 60 -- Exhibit 67, correspondence where Petitioner
22 tells Respondent he's made peace with his decision to stay in
23 Ashland. He's team Heidi. Again, that was a lie, he says. It
24 was just to appease Ms. Brown. He says he was pressured. But,
25 in fact, the evidence shows that it's Mr. Paris who puts

1 pressure on people. His own testimony -- he used that
2 phrase -- he put pressure on his ex-wife.

3 We saw in evidence, in Exhibit 255, he put pressure on
4 Ms. Brown's MatchTune employer, threatening them if they didn't
5 testify in his favor, they were going to have problems with
6 their reputation.

7 And then, finally, we heard he put pressure on Ms. Brown
8 when he demanded the children's beds just this last Sunday, not
9 so that he could use them while he was here with them in
10 Oregon, but so that he could put them in storage and so that
11 she couldn't use them, because he purchased them. Otherwise,
12 he was going to call the police on her. So, in fact, it's
13 Mr. Paris who's putting pressure on other individuals.

14 And, again, the -- Exhibit 227 and the email from the
15 children's French school director indicating that she had
16 prepared the unenrollment forms -- that was done by both
17 parents' request. She provided the documents. But, again,
18 Mr. Paris is claiming that's not really how it happened, or
19 that's a lie.

20 Further, Exhibit 253, an email from the director of E■■■■'s
21 school, again, describing the situation where the child had --
22 was -- she used the word "expelled" -- but we know she was
23 unenrolled from school. And the director had discussed that
24 with both parents. But, again, Mr. Paris says not true or
25 that's not really what happened.

1 And so I think the Court needs to review the evidence
2 that's been admitted and test that against the testimony of the
3 Petitioner to determine -- to make a credibility determination.

4 Now, we talked about wrongful removal and wrongful
5 retention. There's also the issue of whether or not, when that
6 occurred, what was the habitual residence of the children. Of
7 course, the Court looks to the totality of the circumstances.
8 And the most important question is when are we placing a date
9 on determining where their habitual residence was?

10 If the date was today or the date was four months ago,
11 that's going to be a decision for the Court to make if a
12 wrongful removal or retention took place. We need to determine
13 when and what the children's habitual residence was at that
14 point.

15 Now, the Monasky decision, of course, indicates that --
16 that's the -- we look at the totality of the circumstances.
17 Well, here there was clearly --

18 THE COURT: Slow down just a little bit for the court
19 reporter.

20 MS. SKINNER: Thank you.

21 Here there was clearly a move to Oregon, gave up the
22 France apartment, sold all furniture in France, brought up
23 items from storage in California to Oregon, enrolled kids in
24 school in Oregon, secured a year-long Oregon au pair.

25 So what is habitual residence? Do the children have

1 habitual residence in France after they had departed and said,
2 "Au revoir, we're leaving that behind for the year"?

3 THE COURT: Can we start with wrongful removal?
4 Because I'm still not hearing you talk about --

5 MS. SKINNER: The -- our argument --

6 THE COURT: -- the underlying agreement by which the
7 children left for the United States. And, I agree, there are
8 some credibility issues with some of the explanations that
9 don't make a lot of sense by Mr. Paris. But, I'll be honest,
10 I'm not sure if the explanation that your client gave about
11 Exhibit 23 is particularly credible.

12 I know she kept saying, "It's made out of context," but
13 I've yet to see what other context there is, especially in
14 light of the fact that, on October 7th, she filed a petition
15 totally revoking any interest in the July 19th agreement.

16 MS. SKINNER: Thank you, Your Honor. And I'll
17 address both points.

18 As to the intent of Ms. Brown at the time she entered into
19 the July agreement, I think she testified credibly that she
20 negotiated that agreement for hours and hours. There was
21 discussions back and forth about health insurance and all of the
22 conditions that were placed. She had already started to do the
23 work to put those things --

24 THE COURT: Right.

25 MS. SKINNER: -- in motion.

1 And if she had had a plan to not follow through with the
2 July agreement, then why would she get her French visa renewed
3 in September of 2022, or take the steps to get it renewed?

4 THE COURT: But what she told me is that she wanted
5 to leave her options open, which tells me that she believed she
6 had the unilateral ability to simply keep the children in the
7 United States. And she certainly has -- is attempting to do
8 that by the October 7th filing.

9 MS. SKINNER: And I'll address the October 7th filing
10 in just a moment. With the testimony about keeping options
11 open, I think we need to look at that in light of the
12 flip-flopping that Mr. Paris had done at that point. And I
13 think her credible testimony was -- in discussions with her
14 lawyer -- it was, "What do I do if he reneges on this again?
15 What can I do? What -- could a plan be put into place if that
16 happens? I need something with security."

17 And what we don't have in evidence is any evidence that
18 shows that she took -- and I'll get to the October 7th custody
19 pleading in just a moment -- so that aside -- she took no steps
20 to renege on the July agreement. And, in fact, the opposite is
21 true. She took all of the steps to keep that agreement upheld
22 and in place.

23 There's no evidence to show that there was an appointment
24 scheduled with an Oregon lawyer for July 29th, plus six months,
25 so that she could go in there and get the petition filed.

1 There was no petition for custody that was drafted up and ready
2 to go, so that on six months and a day, that that could be
3 done. Because she didn't take any steps to breach the
4 agreement.

5 Now, why did she file Exhibit 49, the custody case in
6 Oregon? Not because that was part of her preplan, because, in
7 fact, the six months hadn't expired at that point. She did
8 that because dad had filed in France, on October 3rd, a French
9 custody case. And Ms. Brown was concerned that, again, it was
10 another reneging of a contract, and that Mr. Paris was going to
11 use the October 3rd French custody filing to, again, yank the
12 kids back.

13 And so the October 7th, 2022, filing had nothing to do
14 with, "I'm trying to now get UCCJEA jurisdiction." It had
15 everything to do with simply getting a status quo in place so
16 that the terms of the July agreement would be able to continue
17 in force. Because, with the status quo, the kids are here for
18 the time being, in line with that one-year agreement.

19 Now, Mr. Paris' counsel had much to say about Mr. Paris'
20 illness. But I haven't heard any testimony or receive -- I
21 didn't receive one piece of evidence brought into this court
22 about a single condition, symptom, or any impact that it had on
23 Mr. Paris' daily living, except that he takes some B-12
24 vitamins and goes and sees a doctor occasionally.

25 But, more importantly, the information about his disease

1 was known to him at the time of the July agreement, which was
2 why all of those conditions were built into the July agreement,
3 which was why Ms. Brown went to all of the lengths that she did
4 to ensure that Mr. Paris' medical condition would be adequately
5 met in the U.S.

6 Mr. Paris indicates in his closing argument, again, that
7 this is not a best-interest determination in the court today.
8 We know that the state court level will determine what's in the
9 kids' best interest. He brought up a reference to Exhibit 27,
10 wherein Ms. Brown was indicating to Mr. Paris that the kids
11 were concerned for their dad. They were afraid he was going to
12 die. And that's because that's what he told them. He was
13 manipulating them and said, "Your dad is going to die."

14 And so he's bringing his kids into the case. And we have
15 evidence of that from just earlier this morning where Mr. Paris
16 is messaging with Ms. Brown, just recently, saying, you know,
17 "Basically, I'm telling the kids that we're moving to Paris at
18 the end of this court case, so you better get your act in
19 gear." And so we have evidence that he's been bringing the
20 kids into these inappropriate communications.

21 Now, Mr. Paris argues, and his counsel argues in closing
22 argument, that he didn't consent to enrollment in Oregon
23 school. But he sure consented to unenrollment in French school
24 well before even the July agreement. That was something that
25 they then remained unenrolled in the French system until much,

1 much later, when he attempted to reenroll the children there.

2 Now, he's indicating that he is not, quote, "on the lease
3 to the Oregon property." But he's an authorized resident of
4 that lease. He has the rights to -- and that's how that was
5 set up.

6 He also agreed to put one of their children's four-year
7 musical program on hold for a year. That was done. And so
8 steps were taken to ensure that the parties' move, for one
9 year, was put into motion. And the one-year pause on the
10 program, of course, was also agreed to by Ms. Brown. She
11 didn't say that the children need to be removed from school
12 altogether and taken out of that program. She went along and
13 agreed, equally, with the proposal that the children's
14 schooling in France would be put on hold, and that that program
15 would be reserved for them.

16 Now, there's one other case that I'd like to bring to the
17 Court's attention if this Court finds that the facts fit this
18 situation. And that's the idea of whether or not Mr. Paris is
19 bringing this action prematurely, having to do with the
20 question about anticipatory breach. And that is the Toren v.
21 Toren case, cited also in my briefing, 191 F.3d 23 --

22 THE COURT: Right.

23 MS. SKINNER: -- which talks about a father who was
24 petitioning to a claim that the mother had made an intent to
25 retain the children past their agreement. But that date had

1 not been reached yet. And the court held there that father's
2 argument was based on mother's future intent, and that the
3 father was seeking a judicial remedy for an anticipatory
4 violation of the Hague Convention. But the Hague Convention
5 only provides a cause of action to petitioners who can
6 establish actual retention. And so that was merely
7 anticipatory retention.

8 We've got the same facts here if the Court finds that
9 Ms. -- even if the Court does find that Ms. Brown has made an
10 anticipatory retention, which we argue she hasn't. No steps
11 were taken. The October 7th Oregon custody petition was for a
12 separate reason, again, to protect and preserve the July
13 agreement to keep the children here.

14 And so this -- and then I also want to touch, just
15 briefly, on habitual residence. Because I think that --
16 depending on if the Court finds there was a wrongful removal or
17 retention, that does not begin and end our discussion about
18 habitual residency being in France. Because if the Court
19 finds, for example, that there was a wrongful removal or
20 retention, and if the Court sets the date of October 7th, for
21 example, I think there's still a pretty strong argument that on
22 October 7th, the facts under a Monasky analysis show that
23 Oregon was, in fact, the children's habitual residence at that
24 time. Because France had been abandoned. And the evidence
25 shows that the children pretty quickly assimilated into their

1 surroundings here in Oregon.

2 And so, in closing, Your Honor, we argue that there was no
3 wrongful removal or retention. If there was, we argue the
4 defense of consent. And if the Court finds that the defense of
5 consent is satisfied, that's the end of the discussion.

6 There's no more habitual residence argument. Thank you, Your
7 Honor.

8 THE COURT: Okay.

9 Reply?

10 MR. STARKS: Just briefly. Thank you, Your Honor.

11 In looking at the two cases, I gave them as steady an eye
12 as I could in a short period of time. I had -- I will say on
13 Caballero, the court says at the end, at page 795, "We cannot
14 say that its factual finding of consent was clearly erroneous,"
15 which is not exactly screaming from the mountaintops that the
16 only decision could have been that there is a finding of
17 consent.

18 And in the Cascio -- I'm maybe pronouncing that right --
19 maybe not -- C-A-S-C-I-O -- in the Cascio case, which is the
20 Northern District of Illinois trial court case -- or, yeah,
21 the -- it merely makes a note at, well, page 866, I believe,
22 that the court was finding, in short, that he had expressly
23 consented to the retention before it occurred.

24 And I would really go back to Exhibit 23 and say that I
25 don't believe the Court can make that same finding here. This

1 consent was based on a lie. And it's simply not the case that
2 it was the sort of consent I think any court is looking for.
3 Thank you, Your Honor.

4 THE COURT: Okay.

5 All right. Let's take a quick break and give me a chance
6 to get my thoughts together.

7 MS. SKINNER: Your Honor, I apologize if this is
8 tardy. I had prepared, as a demonstrative aid for my closing,
9 our proposed timeline.

10 THE COURT: Okay.

11 MS. SKINNER: And I'd like to present that to Your
12 Honor. And I've got a copy.

13 MR. STARKS: Thank you.

14 And I apologize, Your Honor. She had actually sent me a
15 nice proposed timeline with mine and hers. And I -- it was
16 this morning. And I've been so full of this case, I didn't
17 check my emails until we were waiting for you on the bench. So
18 if you do need something, let me know, and we can still provide
19 that to you.

20 THE COURT: Okay.

21 All right. We'll be in recess for 15 minutes.

22 MR. STARKS: Thank you, Your Honor.

23
24 (A break was taken from 3:04 PM to 3:26 PM.)
25

1 THE COURT: Okay. We'll go back on the record.

2 All right. So, as a preliminary matter, both Ms. Brown
3 and Mr. Paris, my decision today is not about who's the better
4 parent, who has behaved badly. I think both Mr. Paris and
5 Ms. Brown -- you're good parents. You obviously love your two
6 girls.

7 And I think, for the most part, you've shielded them from
8 their parents' conflicts -- not all of them. I think both of
9 you understand the importance of having each of you in the
10 lives of your children -- and also the grandparents. I really
11 did appreciate the fact that there was obviously joy in
12 Mr. Paris' father having some time with -- in Ashland -- with
13 the granddaughters. And that tells me you care enough that
14 you're not going to hold your children hostage. So I just
15 thought I'd throw that out.

16 It's also apparent there's no shortage of hurt between the
17 two of you. It's not surprising to see both sides capable of
18 some manipulation, some crimination, some snooping, some
19 dishonesty. It would be hard to find a breakup of a real
20 relationship that didn't encompass some of that stuff. I mean,
21 I see it in every relationship that I know of that is
22 meaningful that falls apart. But I do sincerely hope both of
23 you can move past a lot of those issues and focus on the
24 children.

25 So in terms of habitual residence, I'm finding that

1 Mr. Paris is a dual citizen in both France and the United
2 States. He has a residence in France and at various times has
3 been a resident of the United States. Ms. Brown is a United
4 States citizen. The twins were born on January 15th, 2015, in
5 Ashland, Oregon. They stayed there for a very short, short
6 period before moving to Topanga, California.

7 In 2017, at the age of two, while living in California,
8 the twins became French citizens. Between 2017 and 2019, the
9 family visited France, I believe, three times, for a total of
10 about ten months. During that time, they did attend a French
11 preschool. And they would have been age two to four during
12 these visits.

13 In August 2019, the family moved to Paris. I mean,
14 there's some dispute as to whether the move was intended to be
15 temporary. I think it was. I think, at the very least, at the
16 time of the move, the parties intended to have the children
17 attend preschool in France for at least a year. They told
18 family and friends they intended to be gone for a year.

19 They had plans to develop property in California. They
20 kept their household goods and stored them in California. They
21 rented a furnished apartment in Paris rather than purchasing a
22 home or furnishings. But, all that said, is it happens with
23 the best of intentions. The family remained in France well
24 over a year. Certainly, I think the pandemic may have
25 contributed to this, as well as other factors.

1 The girls were obviously doing well in school and enjoyed
2 it there. There seemed no pressing reason to return to the
3 United States after one year. So one year turned into three
4 years, and during those three years, Paris became the girls'
5 home, meaning it was their habitual residence. The children
6 were French citizens. They spoke fluent French. They attended
7 French schools that had, you know, year-long programs at these
8 academies for music and dance.

9 The girls were involved in sports. They went on school
10 and family excursions, regularly, throughout France. They had
11 school-age friends and attended certainly visits with friends
12 and birthday parties, those type of things. They had extended
13 family and social support in France, including a godfather.

14 So I'm finding the children were fully assimilated to
15 France and an intensive fact inquiry points to the only
16 conclusion that when the children left France for Oregon in
17 July this year, France was their habitual residence. And that
18 analysis is under *Monasky v. Taglieri*, which stands for the
19 proposition that the intent of the parties, while important, is
20 not so much as important as, you know, where was the children's
21 home at the time of removal.

22 So the much more difficult issue, in this case, is whether
23 the removal of the children to Oregon was wrongful or whether
24 there was a wrongful retention. The question here is whether
25 Ms. Brown -- whether Ms. Brown unilaterally decided to remove

1 the children to the United States without the consent of
2 Mr. Paris.

3 So here the Court finds that in early 2022, it is apparent
4 that Ms. Brown is no longer happy living in France. I wouldn't
5 say she was having a mid-life crisis, but, by her own
6 testimony, she had turned 40. She hadn't intended on staying
7 in Paris as long as they had. She certainly did not have a job
8 that she seemed very passionate about. She wanted to be closer
9 to her family. And the relationship with Mr. Paris was -- it's
10 hard for me to know what it was at times, to be honest, but it
11 was less than perfect. There were definitely some difficulties
12 in the relationship. And it's clear that Ms. Brown wanted to
13 go back home.

14 Also, early in 2022, Ms. Brown did convince Mr. Paris that
15 the family should return to the United States, specifically,
16 that they return to Ashland, Oregon, where she has family. I'm
17 a little unclear whether they have property there or not. But
18 I don't know if that's -- that means much to me right now.

19 And this is where, you know, really the difficulties start
20 to play in. Because, Mr. Paris, your intent and what you want
21 seem to change dramatically. It seemed like everybody was on
22 board in early 2022 that the family was going to move to the
23 United States. One-way tickets are purchased April 25th, 2022,
24 for a flight to depart on July 13th, 2022. I believe everybody
25 was leaving on that flight.

1 Everything the family did up until the July 13th departure
2 appears to be in anticipation of a permanent move to the United
3 States. The girls are unenrolled from the French schools by
4 the parents. The lease to the apartment is broken, and the
5 landlord was told, "We are moving to the United States."

6 And, again, these are one of the explanations, Mr. Paris,
7 that you give, that you didn't really mean that. You've said
8 that about a number of explanations you've given to various
9 people. And, at some point, it starts ringing a little hollow.
10 I think you broke the lease specifically because everything
11 points to the fact you were, in fact, moving to the United
12 States. All of the girls' belongings were packed --
13 everything, for the most part -- and any unnecessary items were
14 disposed of.

15 On July 13th, however, Mr. Paris leaves his family and
16 files paperwork -- I'm not sure exactly the specifics of all of
17 this type of paperwork and whether it was with the police
18 department or some other authority -- that effectively puts a
19 hold on Ms. Brown's ability to leave France with the children.
20 Mr. Paris is holding the passports of the entire family at this
21 time.

22 Ms. Brown is left with the two girls, no passports, no
23 home to go to. She moves the children into a hotel, and
24 they're living out of their bags. Mr. Paris has apparently
25 changed his mind about moving to Oregon. But he's also put

1 Ms. Brown in a remarkably difficult position.

2 It's a little unclear to me whether Ms. Brown was keeping
3 the children from Mr. Paris at this time. It's clear that the
4 children and Ms. Brown are upset about not being able to go to
5 Oregon. I think, even on -- in the limited aspect -- that a
6 number of events, that I can only think were positive and
7 uplifting to the children, such as summer camps, that they
8 would have begun immediately, were now out of the question.
9 Visiting the grandparents seemed out of the question.

10 I do think Ms. Brown's attempt at impacting Mr. Paris
11 through a very emotional video was -- she described "a bad
12 parenting moment." But it was a bad parenting moment. And it
13 was a bad parenting moment primarily because of the actions of
14 Mr. Paris at this time.

15 Now, I realize people get to change their mind in the
16 middle of all this, and Mr. Paris certainly had a right to
17 change his mind. But it does then put into play this rushed
18 attempt to put together a remarkably unusual agreement, the
19 July 19th agreement, which allows the girls to fly to the
20 United States for the summer vacation period. It allows the
21 girls to remain in the United States for the 2022-2023 school
22 year, as long as certain conditions are met.

23 And, you know, those conditions generally are that, by a
24 certain date, there be a -- I think by August 22nd -- there be
25 a lease to a four-bedroom home that also includes a home

1 office, that there will be an au pair that will be contracted
2 with for the school year, that there will be health insurance
3 purchased for Mr. Paris by August 22nd in the United States.
4 If he's not eligible, I think, for the Oregon Health Plan, the
5 agreement is Ms. Brown and Mr. Paris would purchase that
6 insurance. And there's some requirement that there be a
7 doctor's appointment I believe with a gastroenterologist.

8 The agreement was negotiated in France with a mediator and
9 filed in a French -- I'm assuming a French court -- I'm not
10 quite sure how France works -- on July 19th, 2022. Ms. Brown
11 and the children fly to Oregon on July 29th, 2022. At some
12 point, Mr. Paris joins them.

13 And, again, this is where we get into behavior that's hard
14 to understand exactly what Mr. Paris' intentions are. During
15 this period, he joins the family. He lives, at times, in, it
16 appears to be the family home. He assists the family in
17 getting set up in the Ashland home. He appears to consent to
18 the family being in Ashland in various texts. He denies that
19 he meant what he said in those texts.

20 He collects the household belongings in California and
21 brings them up to Ashland. He assists in bringing on the
22 au pair. He assists in unenrolling the girls from the French
23 school. He certainly assisted in getting out of the lease in
24 France. On the other hand, he refuses consent to the lease of
25 the home in Ashland, although he agrees he's listed as an

1 occupant. And he did not sign any enrollment documents of the
2 children in the Oregon school.

3 So based on this activity, it's very difficult to
4 understand what Mr. Paris wants or where he wants the family to
5 be. He is also having to deal with a medical condition that
6 might legitimately raise concerns as to whether living in
7 France is in his better interest.

8 I will say, I agree with the Respondent in this area; that
9 it is unclear to the Court the seriousness of the condition.
10 The record is silent with regard to any medical opinion. I've
11 heard some testimony about having to take B-12. I've heard
12 some testimony that there may -- this particular disease may
13 have aspects of cancer. But I certainly have not seen anything
14 more than Mr. Paris' description of his medical condition.

15 During this time, Ms. Brown is holding the children's
16 passports to prevent Mr. Paris from returning to France with
17 the kids, because, I think, in her own words, she was unable to
18 assess, from day to day, what he was going to do.

19 Ms. Brown does complete all of the conditions required by
20 the July 19th agreement to keep the children in Oregon for the
21 school year. Mr. Paris refused to accept the insurance policy,
22 that was purchased on his behalf, by revoking it on
23 August 21st, allegedly due to his medical situation. Again,
24 I'm not sure if I'm willing to find this completely credible,
25 because, one, there is no medical record before me; two,

1 Mr. Paris' explanation for his responses in other parts of the
2 trial have been less than credible.

3 On September 3rd, Mr. Paris does search Ms. Brown's
4 computer and finds emails between attorneys indicating that
5 Ms. Brown's strategy is to not return the children to France
6 for the 2023-2024 school year. That obviously has caused him a
7 lot of concern -- and the Court as well.

8 But here's what I think as to the July 19th agreement: I
9 think both sides entered the July 19th agreement with some
10 doubts to how committed they were to it, in part, because it is
11 completely unclear as to whether the relationship between
12 Mr. Paris and Ms. Brown could maintain itself. I don't think
13 either side knew whether they could make it work as a couple or
14 as a family unit, and, in part, because Mr. Paris has created
15 an untenable situation in which the children had no home, no
16 passports, and no future options for where they would be
17 staying.

18 Mr. Paris believed he needed to do very little to
19 effectuate the insurance requirements of the agreement. This
20 does seem incredible to me, because, given his medical issues
21 that needed to be addressed, I would have thought he would have
22 been more proactive about finding medical care and finding
23 insurance in the United States -- or working out a way to
24 address his medical needs in France. He ultimately would not
25 accept the insurance purchased, despite that condition being

1 met almost unilaterally by Ms. Brown.

2 I agree that Ms. Brown seems to have wanted to leave her
3 options open. Both sides seem to think that it is possible to
4 unilaterally change their mind under the French agreement,
5 which, for better or worse, they both bound themselves to.

6 So I'm finding that there has been no wrongful removal. I
7 base this, in part, in the language found in Flores Castro v.
8 Hernandez Renteria, 971 F.3d 882, a Ninth Circuit case from
9 2020. Judge Smith holds that removal is not wrongful if
10 there's consent to leave the country. It only becomes wrongful
11 when children are retained without consent.

12 I don't believe consent, in this case, can be so easily
13 revoked, and that it results in the children then being treated
14 like a ping-pong ball. At this point, the agreement and the
15 activities of the parties suggest that Mr. Paris has consented
16 to the family living in Oregon for the 2022-2023 school year.

17 Obviously, if Ms. Brown chooses to keep the children in
18 Oregon, she will be in violation of the French agreement. The
19 Oregon courts may want to, and I think they should, enforce the
20 agreement you entered into. I think you should be stuck with
21 it, even if you change your mind.

22 There may be other reasons why the Oregon courts would
23 find otherwise. I do believe that if that comes -- if it comes
24 to that, there's clear evidence before the Court today that the
25 children are certainly creating a habitual residence in the

1 United States without any great impediment.

2 So I am going to deny the petition. I am going to find
3 that there has been no wrongful removal. This was a difficult
4 case. I apologize to both of you for how difficult it is, to
5 both sets of family. I don't see anybody as a great winner
6 here when both of you worked very hard for these children and
7 for both of you.

8 Is there anything further we need to discuss?

9 MR. STARKS: Thank you for your time and attention,
10 Your Honor.

11 MS. SKINNER: Nothing from Respondent. Thank you,
12 Your Honor.

13 THE COURT: All right. Thank you, both.

14

15 (The proceedings adjourned at 3:45 PM.)

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C E R T I F I C A T E

Arnaud Paris v. Heidi Marie Brown

1:22-cv-01593-MC

Court Trial Excerpt

December 7, 2022

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Kendra A. Steppler, RPR, CRR
Official Court Reporter

Signature Date: 12/13/2022